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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

16 IN RE: SOCIAL MEDIA ADOLESCENT
17 ADDICTION/PERSONAL INJURY
18 PRODUCTS LIABILITY LITIGATION,

MDL No. 3047

Case No. 4:22-MD-03047-YGR-TSH

Honorable Yvonne Gonzalez Rogers

19
20 THIS DOCUMENT RELATES TO:

21 *D.H. v. Meta Platforms, Inc., et al.*
Member Case No.: 4:22-cv-04888-YGR

22 *K.S. v. Meta Platforms, Inc., et al.*
23 Member Case No.: 4:23-cv-05146-YGR

24 *"Alice" Doe v. Meta Platforms, Inc., et al.*
25 Member Case No.: 4:23-cv-04719-YGR

**DEFENDANT SNAP INC.'S MOTION
TO DISMISS PURSUANT TO RULE
12(b)(6) COUNTS 12 AND 14 ASSERTED
IN PLAINTIFFS D.H., K.S., AND ALICE
DOE'S AMENDED SHORT FORM
COMPLAINTS**

Hearing:

Date: TBD

Time: TBD

Place: Courtroom 1, Floor 4

Judge: Hon. Yvonne Gonzalez Rogers

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT, at a hearing date and time to be determined in accordance with the Court's Case Management Order No. 7 (Dkt. 479), before the Honorable Yvonne Gonzalez Rogers, in Courtroom 1, Floor 4, of the United States District Court, Northern District of California, located at 1301 Clay Street in Oakland, California, Defendant Snap Inc. will and hereby does move this Court, under Federal Rule of Civil Procedure 12(b)(6), for an order dismissing with prejudice Counts 12 and 14 asserted in Plaintiffs D.H., K.S., and Alice Doe's Amended Short-Form Complaints. *See* First Amended Master Short-Form Complaint And Demand For Jury Trial, *D.H. v. Meta Platforms, Inc.*, No. 4:22-cv-04888-YGR (N.D. Cal. Jan. 2, 2024), ECF No. 28; First Amended Master Short-Form Complaint And Demand For Jury Trial, *K.S. v. Meta Platforms, Inc.*, No. 4:23-cv-05146-YGR (N.D. Cal. Jan. 2, 2024), ECF No. 11; Master Short-Form Complaint And Demand For Jury Trial, *Alice Doe v. Meta Platforms, Inc.*, No. 4:23-cv-04719-YGR (N.D. Cal. Jan. 2, 2024), ECF No. 10.

This Motion is based on the Memorandum of Points and Authorities submitted herewith; any Reply Memorandum or other papers submitted in connection with the Motion; the Amended Short-Form Complaints of Plaintiffs D.H., K.S., and Alice Doe; the Second Amended Master Complaint filed in this action; any matter of which this Court may properly take judicial notice; and any information presented at argument.

DATED: January 12, 2024

By: /s/ Jonathan H. Blavin
JONATHAN H. BLAVIN
Attorney for Defendant SNAP INC.

1 **I. INTRODUCTION**

2 Plaintiffs D.H., K.S., and Alice Doe assert claims against Snap Inc. (“Snap”) under federal
 3 child pornography statutes, 18 U.S.C. §§ 2252 and 2252A, for allegedly receiving, possessing,
 4 and/or transmitting sexually explicit materials involving minors. But these claims are based
 5 entirely on allegations of child sexual abuse material (CSAM) depicting Plaintiffs that was shared
 6 via Snapchat *by third parties*. These claims are categorically barred by Section 230 under the very
 7 principles outlined by this Court in its prior ruling. Section 230 was enacted to *prevent* holding
 8 websites “liable for harmful content not otherwise removed.” *In re Soc. Media Adolescent*
 9 *Addiction/Pers. Inj. Prods. Liab. Litig.* (“In re Soc. Media”), No. 4:22-md-03047-YGR, 2023 WL
 10 7524912, at *7 (N.D. Cal. Nov. 14, 2023); *see also Fair Hous. Council of San Fernando Valley v.*
 11 *Roommates.Com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008) (“Congress sought to immunize the
 12 *removal* of user-generated content” (emphasis in original)); *L.W. through Doe v. Snap Inc.*,
 13 No. 22CV619-LAB-MDD, 2023 WL 3830365, at *4 (S.D. Cal. June 5, 2023) (Section 230 bars
 14 liability for “alleged failure to monitor and remove third-party content”); *Doe v. Grindr Inc.*, No.
 15 223CV02093ODWPDX, 2023 WL 9066310, at *4 (C.D. Cal. Dec. 28, 2023) (Section 230 bars
 16 “impos[ing] liability on [defendant] for failing to regulate third-party content”). Plaintiffs seek to
 17 do just that.

18 Even if the Court were to conclude that Section 230 does not apply here, the allegations
 19 concerning Snap’s conduct related to CSAM in these cases do not sufficiently state a claim because
 20 they do not establish that Snap affirmatively engaged in any prohibited conduct.

21 Snap has great sympathy for the victims of CSAM on online platforms including Snapchat.
 22 Indeed, Snap’s Terms of Service expressly prohibit “any activity that involves sexual exploitation
 23 or abuse of a minor,” and Snap works to report all identified instances of such exploitation to
 24 authorities.¹ But under the statutory immunity Congress established and basic principles of tort

25 _____
 26 ¹ *Community Guidelines*, Snap, [https://values.snap.com/privacy/transparency/community-](https://values.snap.com/privacy/transparency/community-guidelines)
 27 *guidelines*. At the motion to dismiss stage, a court may take judicial notice of the existence of
 28 information that appears on publicly available websites. *Brown v. Google LLC*, 525 F. Supp. 3d
 1049, 1060 (N.D. Cal. 2021); *see also* Fed. R. Evid. 201(b). Snap requests the Court take judicial
 notice of Snap’s community guidelines posted publicly on its website.

1 law, Snap may not be held liable for violations of federal criminal statutes by third-party actors
2 who violate Snap’s own policies.

3 **II. BACKGROUND**

4 **A. Procedural Background**

5 Plaintiffs filed their Master Complaint alleging eighteen causes of action on February 14,
6 2023, Dkt. 136, and a First Amended Master Complaint alleging the same causes of action on April
7 14, 2023, Dkt. 234-1. Subsequently, Plaintiffs identified five priority claims to brief in the first
8 round of motions to dismiss—product liability claims for defective design and failure to warn
9 under both strict liability and negligence theories (Counts 1–4) and a negligence per se claim
10 (Count 10). *See* Notice of Priority Claims at 1, Dkt. 131. This Court deferred briefing on the
11 remaining claims until after it resolved the Defendants’ motion to dismiss on the priority claims.

12 On November 14, 2023, the Court granted in part and denied in part the motion to dismiss
13 those priority claims. *In re Soc. Media*, 2023 WL 7524912, at *1. Relevant here, the Court
14 concluded that Section 230 bars many of Plaintiffs’ asserted theories of liability. *Id.* at *12-19.
15 *Inter alia*, the Court ruled that Section 230 prohibits claims premised upon Defendants’ alleged
16 “[u]se of algorithms to promote addictive engagement”; “[r]ecommending minor accounts to adult
17 strangers”; and “[l]imiting content to short-form and ephemeral content, and allowing private
18 content.” *Id.* at *13. The Court reasoned that, “[w]hether done by an algorithm or an editor,”
19 determining “whether, when, and to whom to publish third-party content,” including
20 “recommend[ing] adult accounts to adolescents,” is a “traditional editorial function[] that [is]
21 essential to publishing.” *Id.* at *14-15.

22 On December 15, 2023, Plaintiffs filed a Second Amended Master Complaint (“SAC”)
23 withdrawing Counts 6 (negligent undertaking), 11 (sex trafficking), and 13 and 15 (CSAM) as to
24 all Defendants, and Counts 12 and 14 (the remaining CSAM claims) as to all Defendants except
25 Meta. Dkt. 494. The Court ordered that, by virtue of Plaintiffs’ withdrawal of those counts from
26 the SAC, any such counts previously asserted in individual Plaintiffs’ Short-Form Complaints
27 (“SFC”) would be deemed withdrawn, and that any individual Plaintiffs who wished to maintain
28 those counts must file amended SFCs re-asserting them. *See* Case Management Order 7 at 2, Dkt.

1 479. On January 2, 2024, individual Plaintiffs D.H., K.S., and Alice Doe filed amended SFCs, in
 2 which they reasserted Counts 12 and 14 against Snap.² Snap submits this motion to dismiss those
 3 counts in the amended SFCs filed by Plaintiffs D.H., K.S., and Alice Doe.³

4 **B. Allegations in the SFCs**

5 **1. D.H. (the “D.H. SFC”)**

6 The D.H. SFC alleges that D.H. created her first account on Facebook around 2010 to 2011,
 7 when she was a minor, and on Instagram about a year later. D.H. SFC ¶¶ 14, 19. The D.H. SFC
 8 alleges that, in or around 2013, “strangers on Instagram began interacting with D.H. in a sexually
 9 explicit manner via direct messages on Instagram and began offering her money to provide them
 10 with sexually explicit material depicting herself.” *Id.* ¶ 29. “D.H. eventually complied with these
 11 constant demands.” *Id.* ¶ 30. Around 2014, D.H. allegedly “created a Snapchat Premium
 12 account . . . as a way to further connect with Facebook and Instagram users.” *Id.* ¶ 33. The D.H.
 13 SFC alleges that D.H. “provided many of the same individuals that interacted with her on Facebook
 14 and Instagram with exclusive access on Snapchat Premium to live videos of her engaging in sexual
 15 conduct[.]” *Id.* ¶ 34.

16 The D.H. SFC alleges that, at one point, D.H. reported an online threat she received on
 17 Instagram to law enforcement, and disclosed her social media activity to her parents. *Id.* ¶¶ 41-42.
 18 The D.H. SFC further alleges that, starting around July 2021, the Canadian Centre for Child
 19 Protection (“CP3”) sent notices to “over 40 social media platforms . . . including but not limited to
 20 Defendants Meta and Snap, identifying and requesting the takedown of the CSAM depicting D.H.”

21 _____
 22 ² Defendant Meta is also named in Counts 12 and 14 in all three of the amended SFCs at issue here.
 23 See First Amended Master Short-Form Complaint And Demand For Jury Trial, *D.H. v. Meta*
 24 *Platforms, Inc.*, No. 4:22-cv-04888-YGR (N.D. Cal. Jan. 2, 2024), ECF No. 28; First Amended
 25 Master Short-Form Complaint And Demand For Jury Trial, *K.S. v. Meta Platforms, Inc.*, No. 4:23-
 26 cv-05146-YGR (N.D. Cal. Jan. 2, 2024), ECF No. 11; Master Short-Form Complaint And Demand
 27 For Jury Trial, *Alice Doe v. Meta Platforms, Inc.*, No. 4:23-cv-04719-YGR (N.D. Cal. Jan. 2,
 28 2024), ECF No. 10. Because the Master Amended Complaint includes Counts 12 and 14 against
 Meta, Meta moved to dismiss those claims in Defendants’ Joint Motion to Dismiss Non-Priority
 Claims (Counts 5, 12, 14, 16–18). Dkt. 516 (filed Dec. 22, 2023).

³ Hereinafter, “Plaintiffs” refers to the individual Plaintiffs whose claims are subject to this motion:
 D.H., K.S., and Alice Doe.

1 *Id.* ¶¶ 50-51. The D.H. SFC does not allege that Snap or Meta failed to remove the CSAM
 2 depicting D.H. from their services after being notified of it, or that any such CSAM remains on
 3 Snapchat, Facebook, or Instagram.

4 **2. K.S. (the “K.S. SFC”)**

5 The K.S. SFC alleges that K.S. created her first social media account on Facebook around
 6 2011, when she was a minor. K.S. SFC ¶ 14. Around 2013, K.S. allegedly joined a Facebook
 7 group where she met an individual named Hunter O’Brien who “used personally identifying
 8 information concerning K.S. that he found on this Facebook group . . . to repeatedly send K.S.
 9 sexually explicit content and to coerce K.S. into sending him CSAM depicting herself.” *Id.* ¶¶ 20-
 10 21. The K.S. SFC alleges that K.S. later created a Snapchat account around 2015, and O’Brien
 11 “continued to abuse K.S. on Facebook and Snap and forced her to send him Facebook and Snap
 12 messages containing CSAM depicting herself.” *Id.* ¶ 28.

13 The K.S. SFC further alleges that, around October 2017, K.S. reported O’Brien’s abuse to
 14 law enforcement, who then notified Meta and Snap about the CSAM being distributed on Facebook
 15 and Snapchat. *Id.* ¶¶ 31-32. The K.S. SFC alleges that the CSAM depicting K.S. was not removed
 16 from Facebook or Snapchat. *Id.* ¶ 33.

17 **3. Alice Doe (the “Doe SFC”)**

18 The Doe SFC alleges that Alice Doe created her first social media accounts on Snap,
 19 Instagram, and Facebook “[i]n or before 2013,” when she was a minor, and that she was later
 20 “paired with” an adult user named David Cottrell on “her various social media platforms.” Doe
 21 SFC ¶¶ 14, 17. (She does not specify how or on what platform this alleged “pairing” occurred.)
 22 The Doe SFC alleges that between 2015 and 2017, Cottrell “repeatedly and pervasively used [Meta
 23 and Snap’s] products to threaten, coerce, and sextort Alice into creating CSAM of herself.” *Id.*
 24 ¶ 19. “In response to Cottrell’s forceful and repeated requests,” Alice began sending CSAM
 25 depicting herself to Cottrell through “Snap, Instagram, Google Drive, and other platforms.” *Id.*
 26 ¶¶ 25-27.

1 The Doe SFC alleges that, in July 2017, Alice’s parents discovered some of Cottrell’s
 2 messages to Alice on Snapchat and reported them to Snap and law enforcement. *Id.* ¶ 35. The SFC
 3 alleges that the CSAM depicting Alice was not removed from Snapchat. *Id.* ¶ 48.

4 **III. LEGAL STANDARD**

5 Under Rule 12(b)(6), a court may dismiss claims that are barred by law, *Seismic Reservoir*
 6 *2020, Inc. v. Paulsson*, 785 F.3d 330, 335 (9th Cir. 2015), or that fail to plead “sufficient factual
 7 matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Ashcroft v. Iqbal*,
 8 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “These
 9 well-established standards apply with equal force in MDL proceedings.” *In re Soc. Media*, 2023
 10 WL 7524912, at *6; *see also, e.g., In re Zofran (Ondansetron) Prods. Liab. Litig.*, No. 1:15-md-
 11 2657-FDS, 2017 WL 1458193, at *5 (D. Mass. Apr. 24, 2017); *In re Optical Disk Drive Antitrust*
 12 *Litig.*, No. 3:10-md-2143 RS, 2011 WL 3894376, at *9 (N.D. Cal. Aug. 3, 2011).

13 **IV. ARGUMENT**

14 Plaintiffs D.H., K.S., and Alice Doe assert claims under 18 U.S.C. § 2255, alleging that
 15 Snap violated two criminal statutes—18 U.S.C. §§ 2252 and 2252A(a)(5)(B)—which prohibit the
 16 knowing transportation, receipt, distribution, and/or possession of CSAM. Section 230 bars
 17 Plaintiffs’ claims because they seek to hold Snap liable for third-party content on its services that
 18 Snap did not create or develop. Independently, the claims fail because Plaintiffs have not plausibly
 19 alleged that Snap *itself* committed any crime, and 18 U.S.C. § 2255 does not permit secondary
 20 liability.

21 **A. Section 230 Bars Plaintiffs’ Claims Under Sections 2252 and 2252A(a)(5)(B).**

22 Section 230 provides “broad federal immunity to any cause of action that would make
 23 service providers liable for information originating with a third-party user.” *Perfect 10, Inc. v.*
 24 *CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007) (internal quotation marks and citation omitted).
 25 As this Court explained in its prior ruling, Section 230 specifically prohibits holding websites
 26 “liable for harmful content not otherwise removed,” to mitigate the otherwise “adverse incentive
 27 not to monitor or remove any harmful content from their sites.” *In re Soc. Media*, 2023 WL
 28 7524912, at *7; *see also Roommates.Com, LLC*, 521 F.3d at 1163 (“Congress sought to spare

1 interactive computer services this grim choice” between “taking responsibility for all messages and
2 deleting no messages at all[.]”).

3 Counts 12 and 14 in Plaintiffs’ SFCs seek to do just that. The asserted claims of harm arise
4 out of CSAM that was allegedly generated and posted on Snapchat by third-party users in
5 contravention of Snap’s own policies,⁴ and Snap’s alleged failure to remove that CSAM. But,
6 “[b]y definition, Snap’s failure to remove CSAM distributed on Snapchat by third
7 parties . . . involve[s] reviewing and deciding whether to publish or to withdraw from publication
8 third-party content,” and therefore falls within the scope of Section 230. *L.W.*, 2023 WL 3830365,
9 at *4 (cleaned up) (Section 230 barred all claims against Snap arising out of CSAM on Snapchat).
10 Accordingly, the Ninth Circuit and other courts have applied Section 230 to bar claims identical to
11 those Plaintiffs bring here. *Doe #1 v. Twitter, Inc.*, No. 22-15103, No. 22-15104, 2023 WL
12 3220912, at *2 (9th Cir. May 3, 2023) (alleged violation of 18 U.S.C. § 2252A); *accord M.H. v.*
13 *OmeGLE.com, LLC*, No. 8:21-cv-814-VMC-TGW, 2022 WL 93575, at *5–6 (M.D. Fla. Jan. 10,
14 2022) (alleged violation of 18 U.S.C. § 2252A), *appeal docketed*, No. 22-10338 (11th Cir. Jan. 31,
15 2022); *M.A. ex rel. P.K. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1045, 1054–55
16 (E.D. Mo. 2011) (alleged violation of criminal statutes enumerated in 18 U.S.C. § 2255(a)); *Doe v.*
17 *Bates*, No. 5:05-CV-91-DF-CMC, 2006 WL 3813758, at *2, *5 (E.D. Tex. Dec. 27, 2006) (alleged
18 violation of 18 U.S.C. § 2252A); *cf. Social Media Cases*, JCCP 5255, No. 22STCV21355, 2023
19 WL 6847378, at *34 (Cal. Super. Oct. 13, 2023) (noting that Section 230 applies to “circumstances
20 where an internet service provider fail[s] to protect a user from harm caused by third-party
21 content”).

22 *Doe v. Twitter* is instructive. There, the plaintiffs asserted claims under 18 U.S.C.
23 §§ 2252A and 2255 based on allegations that “Twitter was notified of the CSAM material depicting
24 [plaintiffs] on its platform”; “initially refused” to remove it; “still knowingly received, maintained,
25

26 ⁴ *Community Guidelines*, Snap, [https://values.snap.com/privacy/transparency/community-](https://values.snap.com/privacy/transparency/community-guidelines)
27 [guidelines](https://values.snap.com/privacy/transparency/community-guidelines) (“We prohibit any activity that involves sexual exploitation or abuse of a minor,
28 including sharing child sexual exploitation or abuse imagery, grooming, or sexual extortion
(sextortion), or the sexualization of children.”).

1 and distributed” it; and “profit[ted] from doing so.” *Doe v. Twitter, Inc.*, 555 F. Supp. 3d 889, 894–
 2 95 (N.D. Cal. 2021) (quotation marks omitted), *aff’d in relevant part*, 2023 WL 3220912 (9th Cir.
 3 May 3, 2023). The Ninth Circuit held that “[b]ecause the complaint targets ‘activity that can be
 4 boiled down to deciding whether to exclude material that third parties seek to post online,’ such
 5 activity ‘is perforce immune under section 230.’” *Doe #1*, 2023 WL 3220912, at *2 (quoting
 6 *Roommates.com, LLC*, 521 F.3d at 1170–71).

7 This case is no different. Plaintiffs focus the majority of their factual allegations on the
 8 conduct of Plaintiffs and individuals who used Snapchat and other online services to coerce
 9 Plaintiffs to create CSAM. *See, e.g.*, D.H. SFC ¶¶ 28-40; K.S. SFC ¶¶ 20-30; Doe SFC ¶¶ 17-34,
 10 36-37. As to Snap’s own conduct, there is no allegation that Snap created any CSAM. The SFCs
 11 simply allege that Snap failed to remove this user-generated CSAM from Snapchat. *See* Doe SFC
 12 ¶ 44 (“Despite [] reports to Snap . . . Alice’s images remain available on Snap[.]”); K.S. SFC ¶ 33
 13 (same). In other words, the allegations against Snap attempt to hold Snap liable for “deciding
 14 whether to publish or to withdraw from publication third-party content.” *In re Soc. Media*, 2023
 15 WL 7524912, at *10 (quoting *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1091 (9th Cir. 2021)); *see also*
 16 *L.W.*, 2023 WL 3830365, at *4. Such claims “directly target [Snap’s] role[] as publisher[] of third
 17 party content,” because addressing Plaintiffs’ claims “would necessarily require [Snap] to publish
 18 less third-party content.”⁵ *In re Soc. Media*, 2023 WL 7524912, at *13.

19 Moreover, as in *Doe v. Twitter*, the allegations that Snap was notified of the CSAM on
 20 Snapchat do not change the Section 230 analysis. “[E]ven if,” as Plaintiffs allege here, “a service
 21 provider knows that third parties are using [its] tools to create illegal content, the service[]
 22 provider’s failure to intervene is immunized.” *Goddard v. Google, Inc.*, No. C 08-2738 JF (PVT),
 23 2008 WL 5245490, at *3 (N.D. Cal. Dec. 17, 2008); *see also, e.g., Mazur v. eBay Inc.*, No. C 07-
 24

25 ⁵ To the extent Plaintiffs attempt to rely on allegations in the SAC that Snap’s dissemination of
 26 user-generated CSAM through certain Snapchat features does not implicate Snap’s role as
 27 publisher of third-party content, those allegations are unavailing. This Court has already held that
 28 Section 230 bars claims premised on the algorithmic recommendation of content and accounts,
 private messaging features, and the ephemerality of content. *See In re Soc. Media*, 2023 WL
 7524912, at *13-16.

03967 MHP, 2008 WL 618988, at *9 (N.D. Cal. Mar. 4, 2008) (“[P]laintiff’s assertion that [defendant] knew of the seller’s illegal conduct and failed to prevent it is nevertheless under the ambit of section 230.”); *M.A. ex rel. P.K.*, 809 F. Supp. 2d at 1050 (same). Such “notice-based liability” would otherwise “deter service providers from regulating the dissemination of offensive material over their own services,” and undermine the goals of Section 230. *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 333 (4th Cir. 1997); *Barrett v. Rosenthal*, 40 Cal. 4th 33, 56 (2006) (same). Accordingly, numerous courts have recognized that Section 230 immunity “applies even after notice of the potentially unlawful nature of the third-party content.” *Universal Commc’n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 420 (1st Cir. 2007); *see Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 407 (6th Cir. 2014) (Section 230 bars “notice-liability defamation claims lodged against” websites); *La Tiejira v. Facebook, Inc.*, 272 F. Supp. 3d 981, 994 (S.D. Tex. 2017) (Section 230 “immunity ‘applies even after notice of the potentially unlawful nature of the third-party content.’”).

Snap has deep sympathy for the victims of CSAM. But, “while the facts of a child pornography case such as this one may be highly offensive, Congress has decided that the parties to be punished and deterred are not the internet service providers but rather are those who created and posted the illegal material.” *Bates*, 2006 WL 3813758, at *4. Section 230 categorically bars these claims against Snap.

B. Plaintiffs Fail to State a Claim Under Sections 2252 and 2252A(a)(5)(B).

Even if this Court were to conclude that Section 230 does not bar Plaintiffs’ claims, the claims independently fail because the SFCs do not allege that Snap engaged in any of the statutorily prohibited actions relating to CSAM. Instead, as discussed above, Plaintiffs’ theory is that Snap facilitated third-parties’ creation, viewing, and sharing of CSAM. *See* D.H. SFC ¶¶ 50-52; K.S. SFC ¶ 33; Doe SFC ¶ 44; *see also, e.g.,* SAC ¶¶ 500-04, 523-31. Broad-based communications services do not commit violations of federal criminal CSAM laws whenever third-party users (impermissibly and in violation of those services’ rules) post such material on the services’ platforms.

1 The CSAM statutes at issue make it unlawful to “knowingly transport[],” “ship[],”
 2 “receive[],” “distribute[],” or “reproduce” visual depictions of “a minor engaging in sexually
 3 explicit conduct,” 18 U.S.C. § 2252(a)(1)–(2), and to “knowingly possess[], or knowingly access[]
 4 with intent to view, any . . . material that contains an image of child pornography” that was
 5 produced or distributed through interstate or foreign commerce, *id.* § 2252A(a)(5)(B).

6 The SFCs do not even come close to stating any such claims against Snap. They allege
 7 only that a Plaintiff, law enforcement, and/or a nonprofit agency reported CSAM depicting
 8 Plaintiffs to Snap years after Plaintiffs first encountered the third-party criminals who coerced them
 9 into creating CSAM; and, in two of the SFCs, that the CSAM depicting Plaintiffs still “remain[s]
 10 available” on Snapchat and other social media platforms.⁶ D.H. ¶¶ 29-30, 52; K.S. ¶¶ 31, 33; Doe
 11 ¶¶ 43-44. That is it. The SFCs do not allege even a single instance of affirmative conduct by Snap.
 12 Bare allegations that Snap failed to stop bad actors on its platform from engaging in prohibited
 13 conduct cannot form the basis of liability under Sections 2252 and 2252A.

14 The few cases permitting Sections 2252 and 2252A claims against internet service
 15 providers have required far more. *See Doe #1 v. MG Freesites, LTD*, No. 7:21-cv-00220-LSC,
 16 2022 WL 407147 (N.D. Ala. Feb. 9, 2022); *Doe v. Mindgeek USA Inc.*, 558 F. Supp. 3d 828 (C.D.
 17 Cal. 2021), *adhered to on denial of reconsideration*, 574 F. Supp. 3d 760 (C.D. Cal. 2021). In
 18 those cases, the websites in question were pornography sites, and the defendants did far “more than
 19 just provide a place to host third-party CSAM or employ neutral tools that treat videos depicting
 20 CSAM the same as any other videos on Pornhub.” *MG Freesites, LTD*, 2022 WL 407147, at *16.
 21 The extensive allegations of the defendants’ conduct included that they “create[ed] thumbnails for
 22 the videos, which are a key component for attracting viewers,” “create[d] and suggest[ed] tags
 23 indicating CSAM for uploaders to use,” and instructed users to use titles and tags indicating CSAM

24
 25 ⁶ The allegations in the D.H. SFC are even weaker. Nowhere in the SFC does D.H. allege that
 26 Snap has failed to remove CSAM of which it was notified. Instead, the SFC merely alleges that the
 27 Canadian Centre for Child Protection has “sent countless notices” to “over 40 social media
 28 platforms, websites, and filesharing services, including but not limited to Defendants Meta and
 Snap, identifying and requesting the takedown of the CSAM depicting D.H.” D.H. SFC ¶ 50. The
 SFC does not allege that CSAM of D.H. still remains on Snapchat.

(for example “indicating that a student is a participant in the video”) to “entice users to click.” *Id.* at *1, *21; *Mindgeek USA Inc.*, 558 F. Supp. 3d at 832.

To the extent Plaintiffs’ claims attempt to impute third-party criminals’ liability to Snap, the claims fail as a matter of law. Unlike other civil liability statutes, Section 2255 does not provide for any form of secondary civil liability, including for “aiders and abettors, or as accessories after the fact.” *Jean-Charles v. Perlitz*, 937 F. Supp. 2d 276, 281–82 (D. Conn. 2013); *see* 18 U.S.C. § 2255; *see also Doe v. City of Gauley Bridge*, No. 2:21-cv-00491, 2022 WL 3587827, at *13 (S.D. W. Va. Aug. 22, 2022) (“the Court finds that [] Congress did not intend to permit a theory of vicarious liability under § 2255”), *appeal dismissed*, No. 22-2025 (4th Cir. Aug. 31, 2023); *Upton v. Vicknair*, No. C.A. 21-407, 2021 WL 2635460, at *5 (E.D. La. June 25, 2021) (“a claim under § 2255 is limited to a defendant [who] committed the acts described in any of the listed offenses” (internal quotation marks omitted)), *rev’d on other grounds*, 2023 WL 2043333 (E.D. La. Feb. 16, 2023); *Doe v. Hansen*, No. 4:16-CV-546 JAR, 2018 WL 2223679, at *5 (E.D. Mo. May 15, 2018) (“the civil remedy provision of [Section 2255] does not permit claims for secondary or vicarious liability”), *aff’d*, 920 F.3d 1184 (8th Cir. 2019).

Accordingly, Plaintiffs have failed to state a claim under Sections 2252 and 2252A(a)(5)(B).

V. CONCLUSION

For the foregoing reasons, Snap respectfully requests that Counts 12 and 14 of the Amended Short-Form Complaints filed by Plaintiffs D.H., K.S., and Alice Doe be dismissed with prejudice.

DATED: January 12, 2024

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